

City and County of Honolulu
Land Use Ordinance
Chapter 21, Revised Ordinances of Honolulu.

Article 5. Specific Use Development Standards (not complete)

Sec. 21-5.50 Antennas

1. Once a new tower or tower site is approved, additional antenna and accessory uses shall be processed under the minor permit procedures.
2. All new towers shall be designed to structurally accommodate the maximum number of additional users technically practicable.....
3. Freestanding antennas and towers shall be set back from every property line a minimum of one foot for every five feet of antenna or tower height.
4. Antennas and towers supported by guy wires shall be set back from every property line a minimum of 1 foot for every one foot of antenna or tower height.

Sec. 21-5.180 Day-car facilities

1. In AG-2, country, residential, apartment and apartment mixed use zoning districts, the following standards shall apply:
 - a. All common activity areas, such as playgrounds, tot lots, play courts and similar facilities, identified on the site plan shall be set back a minimum of 15 feet from adjoining lots in country, residential, apartment or apartment mixed use districts unless a six foot high solid wall is provided as a buffer. This requirement may be waived by the director if topography or landscaping makes such a buffer unnecessary.
 - b. All day-care facilities shall be located with access to a street or right-of-way of minimum access width as determined by the appropriate agencies.
 - c. Facilities with a design capacity exceeding 25 care recipients shall provide an on site pickup and drop-off area equivalent to four standard-sized parking spaces.

Sec. 21-5.290 Group living facilities.

- a. Unless directly related to public health and safety, no group living facility shall be located within 1,000 feet from the next closest group living facility.
- b. Within agricultural districts, activities associated with group living facilities shall be of an agricultural nature.

Sec. 21-5.450 Meeting facilities

- a. In the AG-23, country, residential, apartment and apartment mixed-use districts, the following standards shall apply:
 1. Accessory eating and drinking establishments shall not be permitted, except in the apartment mixed-use district.
 2. The director may require that certain structures be soundproofed and may establish hours of operation for amplification equipment.
 3. The minimum lot size shall be 20,000 sq. ft.

Sec. 21-5.640 Time sharing and transient vacation units.

Time-sharing and transient vacation units shall be permitted in the A-2 medium density apartment-zoning district provided:

- a. They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- b. The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.

ROLE OF THE NEIGHBORHOOD BOARD IN LAND USE PLANNING AND ZONING

Review and comment on proposed long range plans and special area planning

Review and comment on proposed permit applications

Review and comment on proposed changes to various land development codes, ordinances and rules

Identify issues and problems that can be addressed through existing or new programs and procedures

Act as a liaison body between the department (DPP) and the community with respect to land use issues

OAHU GENERAL PLAN

This is a comprehensive expression of the long-term goals and policies for the City and County of Honolulu. The General Plan addresses physical, social, economic and environmental concerns. It is intended to guide all actions of city government, as well as the private sector. It represents the beginning of the comprehensive planning process for Oahu. Perhaps the most scrutinized section of the General Plan is the first section, which addresses population. It is this section that sets the stage for how population growth over the next 20 years and beyond will be directed across the island. The General Plan, in its present form, was first adopted by the City Council in 1977.

Several amendments have been made. It is amended by City Council resolution. In addition to the plans themselves, the Department of Planning and Permitting (DPP) publishes a Biennial Report which gauges how well we are accomplishing the objectives and policies of the General Plan and Development Plans. The last report was published in June 1999. The Objectives and Policies of the General Plan are grouped under the following elements:

- Population
- Economic Activity
- Natural Environment
- Housing
- Transportation and Utilities
- Energy
- Physical Development and Urban Design
- Public Safety Health and Education
- Culture and Recreation
- Government Operations and Fiscal Management

DEVELOPMENT PLANS

City Charter requires the Development Plans. Together with the General Plan, they guide population and land use growth over a 20+-year time span. As part of the annual city budget process, all capital improvement projects are reviewed to determine if they are consistent with the respective Development Plan. Development Plans are also intended to guide City land use approvals and permits and influence private sector investment decisions.

Oahu is divided into eight planning areas. Each area has a Development Plan (DP), which is adopted by City Council ordinance and administered by the Department of Planning and Permitting.

A major revision of the Development Plans, based on a 1992 City Charter change, was completed this year. The revised plans are visionary, conceptual plans without the parcel specific detail of the first DPs (which were

adopted in the early 1980s). Eight new Plans have been adopted; Ewa (in 1997), East Honolulu (in 1999), Ko'olau Loa (in 1999), North Shore (in 2000), Wai'anae (in 2000), Koolaupoko (in 2000), Central Oahu (in 2002), and the Primary Urban Center (in 2004). The Primary Urban Center Development Plan was adopted by the City Council as Ordinance 04-14 and took effect on June 21, 2004. Copies of the ordinance are available at the City Clerk's Office, Room 203, Honolulu Hale.

Six of the Plans (for East Honolulu, Ko'olau Loa, North Shore, Wai'anae, Koolaupoko, and Central Oahu) are designated "Sustainable Communities Plans" to highlight the intent that these areas are not to be heavily developed, and that existing communities and special qualities of each region should be sustained and improved.

The revised Plans are reviewed every five years to revalidate the Plan vision and make appropriate adjustments to policies, principles, and guidelines. All revised Development Plans follow the following general format:

1. Role of the Development Plan area in Oahu's overall development pattern
2. Vision statement for the Area
3. Land Use Policies, Principles and Guidelines
4. Public Facilities and Infrastructure Policies and Principles
5. Implementation
6. Appendix: Maps of Open Space, Land Use and Public Facilities

Koolaupoko Sustainable Communities Plan Adopted Ord. 00-47 Effective 8/25/00.

Adapted the concept of ahupua'a as a basis for land use and natural resource management; protecting agricultural and open space areas. Emphasize alternatives to private passenger vehicles for travel. Enhance existing commercial and civic districts. DPP Lowell Chun 527-6015

REVIEW OF PERMIT APPLICATIONS

The Department of Planning and Permitting (DPP) reviews and administers more than 40 different types of permits. Each type of permit is established by law, usually by ordinance. The law sets out the notification requirements, often establishes processing deadlines, and determines which agency or body will act upon the permit request.

When the DPP receives comments from the Neighborhood Board regarding a plan change or permit application, these comments are considered along with other factors in formulating the department's recommendation or decision. The factors that influence the department's recommendation or decision relate to the purpose of the plan, or the intent of the permit as stated in the applicable ordinance or rule. Therefore, these factors will vary depending on the type of plan change or permit application being considered. Generally, neighborhood boards are given 45 days to respond to the department's request for comments.

Extensions to this deadline are not usually available because there are succeeding deadlines that must be met. For example, within 60 days of receiving a major Shoreline Management Area Use Permit (SMP) application, the Director must request and receive comments from various agencies as well as the neighborhood board, and hold a public hearing; and 10 days after the hearing, transmit the department's report to the City Council.

It is important for the Department to know why a particular development proposal is supported or opposed by the Neighborhood Board. Remember, the department is primarily interested in land use impacts. The Department will ask for a response from a project applicant to questions regarding the findings of a traffic study or potential noise impacts, but will not address comments on the integrity of the applicant or whether a pre-school's curriculum is sufficiently nurturing.

Effective Participation in the Permit Review Process

- *Be aware that some projects need to post a sign on the proposed site alerting the community to the project and public hearing details. This is intended to promote more community awareness of pending proposals.
- *How will mail and "rush" responses be handled?
- *Pay attention to deadlines. If a response will be late, let the department know by telephone
- *Know who to contact in the department for more information about a particular project
- *Inform DPP immediately if there is interest in having a public hearing on a particular type of permit application, where a public hearing is discretionary, such as for minor conditional use permits i.e.meeting facilities (churches), day-care, schools
- * If the Board cannot reach a decision or a majority vote on a proposal, it would still be helpful to know what the differences of opinion were and other points of concern raised during the Board's discussions

PROFILES OF PERMIT TYPES THAT WILL REQUEST NEIGHBORHOOD BOARD INPUT 5/12/05

ZONE CHANGE LUO Section 2.40-1

PURPOSE

- * Implement the land use policy of the City and County of Honolulu, as established by the General Plan and Development Plans
- * Regulate the use of the land through establishment & application of several zoning districts, each with its own set of permitted uses & detailed development standards for the height, bulk & location of buildings.

APPLICABILITY

- * When a use is proposed in a zoning district where that use is not permitted or for development under a different set of development standards

REVIEW CRITERIA:

- * Conformance to General Plan Objectives and Policies
- * Conformance to the Development/Sustainable Communities Plan
- * Confirmation that adequate public facilities and services will be available, such as sewers, water supply and roadways prior to the establishment of the use
- * Impacts, beneficial and adverse on community as a whole in terms of social, physical, and environmental. If there are negative impacts, can they be mitigated?
- * Is the timing of the zone change appropriate?

APPLICATION PROCESSING

- * Total of 255 days from acceptance of application to approval
- * 45 days for staff review and agency comments
- * 45 days thereafter to prepare report to the Planning Commission
- * Planning Commission (public hearing held) reviews and makes recommendation
- * City Council reviews and takes action as ordinance (public hearing held)

CONDITIONAL USE PERMIT Minor and Major References: LUO Section 2.40.

PURPOSE

- * To allow uses considered appropriate in certain zoning districts if minimum standards and conditions are met; reviewed on a case-by-case basis

APPLICABILITY

- * Examples of uses permitted under certain conditions in specified zoning districts Use Permit Type Zoning District Group Living Facility Minor Ag., Res., Apt., MX-3 Hotels Minor I-2, IMX-1 Utility Installations, Minor All districts Type B

HIGHLIGHTS

- * Site must be suitable and the proposed use will not substantially impair the use of surrounding properties
- * The use will contribute to the general welfare of the community-at-large or surrounding neighborhood
- * Meets minimum standards and special conditions may be imposed
- * Approved by the Director of DPP

APPLICATION PROCESSING

*** Minor CUP (45 days):**

- * 45 days staff review & Director's decision, unless it is decided a public hearing is required--then 90 days
- * Antennas, meeting facilities, day-care facilities, or schools applications shall be presented to neighborhood board.
- * Processing time may be extended if project is in Special Management Area (SMA)

*** Major (90 days)**

- * Present to neighborhood board and department pre-application meeting
- * 45 days for agency comments and public hearing scheduling
- * Additional processing days if project is in SMA

MAJOR SPECIAL MANAGEMENT AREA USE PERMIT (SMP) Chapter 25, Revised Ordinances

PURPOSE

- * Preserve, protect and, where possible, restore the natural, cultural and recreational resources of the Coastal Zone of Oahu

APPLICABILITY

- * Placement of solid or liquid material, thermal waste, grading, mining, change in density or intensity of land use, change in intensity of use of water ecology, construction or alteration of the size of any structure
- * Exemptions include: single-family residences, road repair, general maintenance dredging, utility repair, zoning variances, interior alterations, demolition, agriculture, subdivisions into four or less lots, subdivision into lots greater than 20 acres

HIGHLIGHTS

- * Development of \$125,000 or less can be processed as minor permit if no significant environmental impacts (Director of DPP makes the decision)
- * Development not meeting above are processed as major permits and require EA/EIS and public hearing (City Council makes the decision by Resolution)

REVIEW CRITERIA

- * Consistency with SMA (Special Management Area) objectives and policies:
- * Public beach access
- * Adequate public recreation areas
- * Solid and liquid waste management
- * Coastal view protection
- * Archaeological site preservation
- * Protection of natural ecosystems

APPLICATION PROCESSING (Major permit)

- * Approximately 40-day review of Environmental Assessment (EA) to determine if Environmental Impact Statement (EIS) required
- * Notification of acceptances of application within 7 days of receipt of a Finding of No Significant Impact (FONSI) or accepted EIS
- * Total of 120 days from acceptance of SMA application:

SHORELINE SETBACK VARIANCE (SV) Chapter 23, Revised Ordinances 5/12/05

PURPOSE

- * To protect against encroachment of structures which cause shore erosion and block lateral access to public beaches.
- * To limit construction within setback areas, thereby decreasing the risk of residential and other structures being damaged by tsunamis, high waves or coastal erosion.

APPLICABILITY

- * Applies to improvements within defined shoreline setbacks of all parcels with "shoreline" frontage.

- * The shoreline is defined by the upper reaches of the wash of waves as evidenced by the edge of vegetation growth or the debris line.
- * Exempted improvements include certain government construction and maintenance/repair work on existing structures built prior to June 22, 1970, and previously permitted facilities.

HIGHLIGHTS

- * Standard shoreline setback is 40 feet, except for new subdivisions fronting sandy beaches that result in increased density or structures (60 feet) and as may be allowed for nonconforming lots.
- * Certified shoreline survey is required.
- * No structure is permitted in the shoreline setback without a shoreline variance.
- * Erosion protection structure plans must be stamped by a licensed civil or structural engineer.

PERMIT CRITERIA

- * Protect natural shoreline and minimize adverse impacts on beach processes
- * Preserve public access along the shoreline
- * Protect public views to, from and along shoreline
- * Reduce hazards to property from coastal floods

APPLICATION PROCESSING

- * Environmental Assessment/EIS is required prior to acceptance of SV application; approximately 45-50 days for processing.
- * Total of 90 days from acceptance of application to decision by director
- * Public hearing required

PERMITS THAT DO NOT REQUIRE NEIGHBORHOOD BOARD INPUT 9/16/01

OHANA DWELLINGS

An Ohana dwelling is a second dwelling unit permitted on a lot where the underlying zoning allows only one dwelling. Honolulu's Ohana provisions first adopted in 1982 have been amended several times.

ELIGIBLE AREAS

1. Ohana dwellings are permitted in agricultural, country, & residential zoning districts, except R-3.5 Residential. They are not allowed in cluster, planned development housing, zero lot line, & duplex unit projects.
2. Infrastructure (water, sewer, roads) must be able to support additional density, as determined by the appropriate City agencies. Where sewers are not available, State Department of Health approval is required for individual wastewater facilities (septic tank or other approved system).
3. The lot must have direct access to a street with a paved width of 18 feet, if the street serves six lots, or 20 feet, if it serves more than 6 lots.
4. Exclusion Provision: An area with adequate public facilities can petition to be excluded from ohana-eligibility. Owners/lessees of sixty percent (60%) of the lots in a census tract must sign a petition asking to be excluded.

To find out if your property is in an ohana-eligible area, call the DPP AT 523-4131

RESTRICTIONS

1. Ohana dwellings may be occupied only by relatives of the family living in main house.
2. Ohana dwellings are permitted only on conforming lots (lots which meet minimum size and dimensions for that zoning district), and must be attached to the main house.
3. In April 2006 the City Council passed legislation to: 1) retain zoning (administrative permit) adjustments allowing an applicant to rebuild or expand a nonconforming Ohana unit under specified criteria & 2) established a single maximum size standard of 1,000-sq. ft. for all Ohana dwelling units.

Previous size standards: [Size of unit is limited:

Zoning District Maximum Floor Area

AG-1, AG-2, Country 1,000 sq. ft.

R-20 1,000 sq. ft.

R-10 900 sq. ft.

R-7.5, R-5 700 sq. ft.]

HOW TO APPLY

Applying for an ohana permit is a two-step process, involving a pre-check procedure, and the filing of a standard restrictive covenant prior to issuance of the building permit. Forms and instructions can be obtained from the Building Division.

DISCRETIONARY AND MINISTERIAL PERMITS

In addition to planning and zoning reviews, the Department of Planning and Permitting issues permits, clearance forms, and other types of approvals directly related to the construction of a building or development of land. Most of these reviews and approvals are ministerial because no discretion is involved; the requirements are quantitative, specific and measurable. Therefore, neighborhood boards and the general public are not involved in project reviews at this stage of permitting; i.e. no public hearings are held. However, the community can participate through standard public hearing procedures, in proposed changes to the ordinances and rules that are used to issue these approvals. Examples of discretionary and ministerial permits include: zoning adjustments, minor site development, minor special management area permit, building permit, land subdivision approval, sign permit, and grading permits.

VARIANCES

LUO SEC. 21-1.50

Petitions for varying the application of the provisions of the LUO shall be determined pursuant to Sections 6-1516 and 6-1517 of the charter, including the application of the provisions relating to signs.

City Charter (*As of February 20, 2001*)

Section 6-1516. Zoning Board of Appeals --

There shall be a zoning board of appeals, which shall consist of five members. The board shall be governed by the provisions of Section 13-103 of this charter. The zoning board of appeals shall hear²⁷ and determine appeals from the actions of the director in the administration of the zoning ordinances, including variances therefore, subdivision ordinances and any rules and regulations adopted pursuant to either.²⁸ An appeal shall be sustained only if the board finds that the director's action was based on an erroneous finding of a material fact, or that the director had acted in an arbitrary or capricious manner or had manifestly abused discretion.²⁹ (1992)

General Election Charter Amendment Question No. 5; 1998 General Election Charter Amendment Question No. 1(III)

²⁷Agency review boards are often authorized to conduct their own evidentiary hearings. Administrative agencies may hear and determine facts, and decide the application of law to the ascertained facts. The receipt of oral and documentary evidence, as well as the cross-examination of witnesses, is appropriate at zoning board of appeals hearings. *Price v. Zoning Board of Appeals of the City and County of Honolulu*, 77 Hawai'i 168, 883 P.2d 629 (1994).

²⁸Zoning board of appeals review is limited to zoning and subdivision matters only. *Swire Properties (Hawaii), Ltd. v. Zoning Board of Appeals of the City and County of Honolulu*, 73 Haw. 1, 826 P.2d 876 (1992).

²⁹Zoning board of appeals may not issue cease and desist orders for violations of the Land Use Ordinance, but is restricted to either sustaining or denying appeals from orders issued by the director. *Windward Marine Resort, Inc. v. Sullivan*, 86 Hawai'i 171, 948 P.2d 592 (1997).

Section 6-1517. Zoning Variances --

The director shall hear and determine petitions for varying the application of the zoning code with respect to a specific parcel of land and may grant such a variance upon the ground of unnecessary hardship if the record shows that (1) the applicant would be deprived of the reasonable use of such land or building if the provisions of the zoning code were strictly applicable; (2) the request of the applicant is due to unique circumstances and not the general conditions in the neighborhood, so that the reasonableness of the neighborhood zoning is not drawn into question; and (3) the request, if approved, will not alter the essential character of the neighborhood nor be contrary to the intent and purpose of the zoning ordinance.³⁰ Prior to the granting of any variance, the director shall hold a public hearing thereon. The director shall specify the particular evidence, which supports the granting of a variance. (*Reso. 83-357; 1992*)

General Election Charter Amendment Question No. 5; 1998 General Election Charter Amendment Question No. 1(III)

"Reasonable use" within the meaning of the charter is not the use most desired by the property owner; property owner must show inability to make any reasonable use of his land without the variance. "Unique circumstances" has to do with whether specific attributes of the parcel are present that justify the request for a variance. *Korean Buddhist Dae Won Sa Temple of Hawaii, Inc. v. Zoning Board of Appeals of City and County of Honolulu*, 87 Hawai'i 217, 953 P.2d 1315 (1998).

LIST OF RESOURCES

- * Oahu General Plan - available at the Municipal Bookstore or DPP for \$1.50.
- * Development Plan Ordinance - available City Clerk Office at Honolulu Hale
- * Land Use Ordinance - available at the Municipal Bookstore for \$8.50.

<http://www.honoluludpp.org/Planning/ZoneChanges.asp>

http://www.honoluludpp.org/aboutdpp/contact_info.asp

<http://www.honolulu.gov/council/index1.htm>

http://www.honoluludpp.org/Planning/DevSust_Koolaupoko.asp

(Development Plan)

Donna Wong, Chair
Planning, Zoning & Environment Committee
Kailua Neighborhood Board